

REMARKS

This responds to the Office Action mailed on June 23, 2004. Claims 19 and 31 are amended. No claims are canceled or added. As a result, claims 1 – 38 remain pending in this application.

Information Disclosure Statement

Applicant is submitting an Information Disclosure Statement and 1449 Form with this Response. Applicant respectfully requests that an initialed copy of the 1449 Form be returned to Applicant's Representative to indicate that the cited references have been considered by the Examiner.

Double Patenting Rejection

Claims 19, 20, 31, 32, 35 and 36 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 36 and 37 of co-pending application Serial No. 10/025,183. Applicant will respectfully consider filing a terminal disclaimer to obviate this obviousness-type double patenting rejection when the claims are otherwise indicated to be allowable.

§102 Rejection of the Claims

Claims 19, 26, 31, 32 and 36 were rejected under 35 USC § 102(b) as being clearly anticipated by Barreras (U.S. Patent No. 5,807,397). Applicant has amended independent claims 19 and 31 to overcome this rejection.

The Office Action states:

Barreras discloses using a near field antenna comprising inductor 30 and a far field antenna comprising internal antenna 11. Further, memory 48 provides a data buffer for communication signals via antenna 11.

(Office Action at 3.) However, as seen from FIG. 1, any buffering by memory 48 of Barreras is performed internally by an implantable device. By contrast, claims 19, 26, 31, 32, and 36 presently recite or incorporate external buffering. These claims also recite using an intermediary external transceiver device for communication between an implantable device and a remote

external transceiver device. Therefore, Applicant respectfully submits that Barreras does not disclose all elements of these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

§103 Rejection of the Claims

Claims 27, 30 and 31 were rejected under 35 USC § 103(a) as being unpatentable over Von Arx et al. (U.S. Patent No. 6,574,510). Applicant respectfully traverses on the grounds that the Von Arx et al. reference is disqualified by the American Inventors Protection Act (AIPA) of 1999 from being used as a reference against the present patent application under 35 U.S.C. § 102(e)/103. Applicant declares that, to the best of Applicant's knowledge, at the time the present invention was made, the present patent application and the application for the Von Arx et al. U.S. Patent No. 6,574,510 were owned by the same entity, that is, Cardiac Pacemakers, Inc. The application for Von Arx et al. U.S. Patent No. 6,574,510 was filed on Nov. 30, 2000, and did not publish until May 30, 2002 (after the January 8, 2002 filing date of the present patent application), and did not issue as a patent on June 3, 2003. Applicant believes, therefore, that the Von Arx et al. U.S. Patent No. 6,574,510 is disqualified as a reference for purposes of section 102(e)/103(a) under 35 U.S.C. 103(c). Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of the present patent application insofar as it relies upon the Von Arx et al. reference.

Allowable Subject Matter

Applicant gratefully acknowledges the allowance of claims 1-18.

Claims 21-25, 28, 29, 33, 34, 37 and 38 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Nonetheless, for the reasons stated above, Applicant believes that these claims are allowable in the present form. Accordingly, Applicant respectfully requests withdrawal of the objection to these claims.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

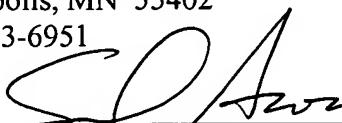
Respectfully submitted,

JEFFREY A. VON ARX ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6951

By



Suneel Arora
Reg. No. 42,267

Date Sept. 22, 2004

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 23 day of September, 2004.

Paula Suchy
Name

Paula Suchy
Signature